

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRIAN ALLEN CARPENTER,
JR., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

REBECCA RENNA CARPENTER, a/k/a
REBECCA PIFER,

Respondent-Appellant.

UNPUBLISHED

August 26, 2003

No. 245247

Macomb Circuit Court

Family Division

LC No. 01-051509-NA

Before: Markey, P.J., and Cavanagh and Saad, JJ.

MEMORANDUM.

Respondent appeals as of right the termination of her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 5.974(I) [now MCR 3.977(J)]; *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent had been substantiated for neglect of the minor in West Virginia during the child's infancy and had then relinquished custody of the minor child to a friend who abused him. Respondent had not parented the minor child for several years. Respondent had not benefited from services provided in West Virginia, and over the course of the year during which services were coordinated by petitioner, respondent had again failed to benefit. Because of respondent's developmental disability, it was clear that she would never be able to adequately parent the special needs minor child and that he would likely suffer harm if returned to her.

Additionally the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent did not recognize or understand the severe disability afflicting the minor child and was not capable of providing him with the intensive supervision, assistance and care that he required.

Respondent also cursorily contends that petitioner violated her rights under the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq.* Although services and programs provided by petitioner in an attempt to reunify the family in a child protective proceeding must comply with the ADA, respondent failed to raise this issue in the trial court, and therefore it is not preserved for review. *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997). The proper time to raise a claim of violation of the ADA in a child protective proceeding is at the time the case service plan is adopted by the trial court. *In re Terry*, 240 Mich App 14, 26-27; 610 NW2d 563 (2000).

The trial court did not clearly err in terminating respondent's parental rights to the minor child.

Affirmed.

/s/ Jane E. Markey
/s/ Mark J. Cavanagh
/s/ Henry William Saad